

Page 1

1 IN THE UNITED STATES DISTRICTS COURT
2 FOR THE DISTRICT OF MONTANA
3 BILLINGS DIVISION
4 DEIDRE AGAN,) Cause 1:19-cv-00083-SPW-TJC
5)
6)
7) VIDEO DEPOSITION
8)
9)
10 vs.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

2722 Third Avenue North, Suite 400
Billings, Montana
May 27, 2020

APPEARANCES:

Nelson G. Wolff (Phone)
SCHLICHTER, BOGARD & DENTON LAW FIRM
100 South Fourth Street, Suite 1200
St. Louis, Missouri 63102
nwolff@uselaws.com

-and

Russell D. Yerger
YERGER LAW FIRM, P.C.
2722 Third Avenue North, Suite 400
Billings, Montana 59101
ryerger@integra.net

For the Plaintiff

Anthony M. Nicastro
KNIGHT NICASTRO MACKAY, LLC
27 Shiloh Road, Suite 10
Billings, Montana 59106
nicastro@knightnicastro.com

For the Defendant.

Also present: Joel Hageman
Videographer

EXHIBIT

2

	I N D E X	Page 2	Page 4
1	Page		
2			
3	Examination by Mr. Nicastro	6	1 The video deposition of DEIDRE AGAN,
4	Examination by Mr. Wolff	172	2 produced, sworn and examined upon her oath on the
5	Further Examination by Mr. Nicastro	173	3 27th day of May, 2020, commencing at 9:03 a.m., at
6			4 2722 Third Avenue North, Suite 400, Billings,
7			5 Montana, before me, Frances L. Mock, a free-lance
8			6 reporter, a Notary Public within and for the State of
9			7 Montana pursuant to Notice and the Federal Rules of
10			8 Civil Procedure, for the examination of the said
11			9 DEIDRE AGAN, the plaintiff called for examination by
12			10 the defendant herein, in a certain suit and matter in
13			11 controversy now pending and undetermined in the said
14			12 United States District Court, District of Montana,
15			13 Billings Division, being Civil Action No.
16			14 1:19-cv-0083-SPW-TJC.
17			15
18			16
19			17
20			18
21			19
22			20
23			21
24			22 "mm-hmm" is yes
25			23 "huh-uh" is no
			24
			25
	E X H I B I T S	Page 3	Page 5
1	Number Description	Page	
2			
3	1 BNSF Crew Management-Tape History	60	1 MR. HAGEMAN: Good morning.
4	2 BNSF Return to Work Med. Questionnaire	85	2 We are going on the record at 9:03 a.m. on
5	3 7/23/19 Dr. Ackerman visit	90	3 May 27th, 2020.
6	4 12/16/08 Miles City Progress Note	96	4 Please note that the microphones are
7	5 1/30/09 Miles City Progress	98	5 sensitive and may pick up whispering and private
8	6 2/10/09 Holy Rosary Screening Form	102	6 conversations and cellular interference.
9	7 3/4/09 Miles City Progress Note	106	7 Please turn off all cell phones or place
10	8 9/9/19 BNSF Medical Questionnaire	111	8 them away from the microphones as they can interfere
11	9 10/2/12 Holy Rosary Radiology Report	11	9 with the deposition audio.
12	10 12/1/13 PA Kara Erickson visit, etc.	128	10 Audio and video recording will continue to
13	11 8/8/14 Holy Rosary Healthcare visits	139	11 take place until all parties agree to go off the
14	12 12/23/14 Holy Rosary HC visit	141	12 record.
15	13 Holy Rosary Healthcare records	143	13 This is Media Unit 1 of the video recorded
16	14 On-train documents...	149	14 deposition of Deidre Agan taken by counsel for the
17	15 8/24/16 Douglas Dalton PA record	169	15 defense in the matter of Deidre Agan, plaintiff
18	16 11/15/2016 Dr. Roccisano record	170	16 versus BNSF Railway Company, defendant filed in the
19			17 United States District Court for the District of
20			18 Montana, Billings Division.
21			19 This deposition is being held at the Yerger
22			20 Law Firm located at 2722 Third Avenue North,
23			21 Billings, Montana.
24			22 My name is Joel Hageman from the firm
25			23 Veritext, and I am the videographer. The court
			24 reporter is Fran Mock from the firm Veritext.
			25 I'm not related to any party in this

2 (Pages 2 - 5)

Page 18	Page 20
<p>1 perform my job, but there is still pain.</p> <p>2 Q. Do you typically have one shoulder that</p> <p>3 hurts more than the other?</p> <p>4 A. Sometimes.</p> <p>5 Q. I'm just saying in general, like if you</p> <p>6 were to add up all the days in the last six months,</p> <p>7 does your right shoulder hurt shoulder hurt more than</p> <p>8 your left? Left more than the other, or are they</p> <p>9 equal?</p> <p>10 A. Probably equal.</p> <p>11 Q. Which medical provider are you seeing for</p> <p>12 neck and shoulder pain currently?</p> <p>13 A. I have not seen a medical provider</p> <p>14 recently.</p> <p>15 Q. In 2019, did you see a medical provider for</p> <p>16 neck and shoulder pain?</p> <p>17 A. No.</p> <p>18 I saw one to establish care.</p> <p>19 Q. And when was that?</p> <p>20 A. I couldn't tell you exactly when.</p> <p>21 Q. Are we talking in 2019?</p> <p>22 A. Yes, I believe.</p> <p>23 Q. Okay.</p> <p>24 Has any doctor in the last year and a half</p> <p>25 told you that the shoulder and neck symptoms that</p>	<p>1 Q. Okay.</p> <p>2 So, if you went to Ortho Montana right now,</p> <p>3 are you saying they're not seeing you? They refuse</p> <p>4 to see you?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay.</p> <p>7 So, do you even know how much it would cost</p> <p>8 if you went to Ortho Montana with your current health</p> <p>9 insurance to have one of the doctors who previously</p> <p>10 treated you follow up with you?</p> <p>11 A. No.</p> <p>12 Q. So, the only reason you didn't go back to</p> <p>13 the doctor in 20 -- so, the only reason you haven't</p> <p>14 gone back to Ortho Montana is because of some unpaid</p> <p>15 bills from 2016?</p> <p>16 A. No health insurance.</p> <p>17 Q. When did you get health insurance back,</p> <p>18 though?</p> <p>19 A. In 2019.</p> <p>20 Q. When were you reinstated for work?</p> <p>21 A. 2019.</p> <p>22 Q. Okay.</p> <p>23 And what month?</p> <p>24 A. February.</p> <p>25 Q. So at the beginning of the year, correct?</p>
Page 19	Page 21
<p>1 you're feeling right now are related to the accident?</p> <p>2 MR. WOLFF: Object to the lack of</p> <p>3 foundation.</p> <p>4 Subject to that, you may answer.</p> <p>5 THE WITNESS: Repeat the question.</p> <p>6 BY MR. NICASTRO:</p> <p>7 Q. Sure.</p> <p>8 Has any medical provider in the last year</p> <p>9 and a half told you that the neck and shoulder issues</p> <p>10 that we just discussed were caused the accident?</p> <p>11 A. No.</p> <p>12 Q. And if the answer's the same, that's fine.</p> <p>13 I want to be sure I'm clear on it.</p> <p>14 In 2019, what was the reason for not seeing</p> <p>15 a doctor for a neck or shoulder pain? Is it the same</p> <p>16 reason that you gave for not seeing a doctor for the</p> <p>17 headaches?</p> <p>18 A. Yes.</p> <p>19 Q. Why have you not gone back to Ortho Montana</p> <p>20 to have them look at these symptoms?</p> <p>21 A. Because my medical bills were never paid by</p> <p>22 the company.</p> <p>23 Q. So if you went to Ortho Montana last -- do</p> <p>24 you have insurance currently?</p> <p>25 A. Yes.</p>	<p>1 A. Correct.</p> <p>2 Q. Correct.</p> <p>3 And so you would agree that from February</p> <p>4 of 2019 up until the present day, you've had health</p> <p>5 insurance, so your doctor visit with either one of</p> <p>6 those doctors at Ortho Montana probably would have</p> <p>7 been covered?</p> <p>8 MR. WOLFF: Object to the form. It calls</p> <p>9 for speculation.</p> <p>10 BY MR. NICASTRO:</p> <p>11 Q. Go ahead and answer.</p> <p>12 A. You said it would probably be covered?</p> <p>13 Q. Let me ask you it this way:</p> <p>14 Can you think of any -- can you give me any</p> <p>15 particular reason why you think they may not have</p> <p>16 been covered by your health insurance?</p> <p>17 MR. YERGER: Calls for a legal conclusion.</p> <p>18 Go ahead and answer it.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. NICASTRO:</p> <p>21 Q. Have you tried to go see any doctor for any</p> <p>22 of these medical conditions, and a doctor either</p> <p>23 didn't see you because of unpaid medical bills, or</p> <p>24 told you that they wouldn't see you unless you paid</p> <p>25 an amount of money that you thought was unreasonable?</p>

Page 22	Page 24
<p>1 A. Ortho Montana.</p> <p>2 Q. Okay.</p> <p>3 So Ortho Montana told you they wouldn't see 4 you?</p> <p>5 A. Yeah, because I had an outstanding balance.</p> <p>6 Q. Oh, okay.</p> <p>7 So when did that happen? When did you try 8 to go back to Ortho Montana, and they told you that 9 they would not see you because of an outstanding 10 balance?</p> <p>11 A. 2017.</p> <p>12 Q. And did you have health insurance at that 13 time?</p> <p>14 A. No.</p> <p>15 Q. Since you've had health insurance in 2019, 16 has Ortho Montana told you that they would not see 17 you because of an outstanding balance?</p> <p>18 A. I have not been to Ortho Montana.</p> <p>19 Q. Okay.</p> <p>20 So, you haven't even tried to go back to 21 Ortho Montana to see if they would not give you care 22 because of the balance, correct?</p> <p>23 A. Not recently.</p> <p>24 Q. Okay.</p> <p>25 And so when you -- when was it in 2017,</p>	<p>1 (indicating).</p> <p>2 Q. Okay.</p> <p>3 So you're pointing to your pinkie finger 4 and your ring finger?</p> <p>5 A. Correct.</p> <p>6 Q. And you just did your right hand.</p> <p>7 Is it both hands, or is it just your right 8 hand?</p> <p>9 A. Primarily just my right.</p> <p>10 Q. All right.</p> <p>11 And have you seen a doctor for any of that 12 numbness in the last year and a half?</p> <p>13 A. No.</p> <p>14 Q. For the same reasons that we've already 15 discussed?</p> <p>16 A. Yes.</p> <p>17 Q. Do you take anything for those symptoms?</p> <p>18 A. No.</p> <p>19 Q. Let me back up on the neck pain and the 20 shoulder pain.</p> <p>21 Do you take any medication for that?</p> <p>22 A. Ibuprofen.</p> <p>23 Q. Anything for prescription?</p> <p>24 A. No.</p> <p>25 Q. Has any medical doctor told you that the</p>
Page 23	Page 25
<p>1 what month --</p> <p>2 A. I --</p> <p>3 MR. YERGER: Let him finish the question.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. NICASTRO:</p> <p>6 Q. What month was it where you say they 7 refused to see you?</p> <p>8 A. I can't give you an exact time.</p> <p>9 Q. Was it a conversation you had with somebody 10 in the office, or was it a doctor that said that?</p> <p>11 A. It was over the phone when I called to make 12 an appointment.</p> <p>13 Q. Do you know who that individual was?</p> <p>14 A. No.</p> <p>15 Q. Have you tried at any other time to go back 16 to Ortho Montana since 2017?</p> <p>17 A. No.</p> <p>18 Q. The numbness in your fingers, is that 19 something you still currently have?</p> <p>20 A. At times.</p> <p>21 Q. How often do you get that?</p> <p>22 A. A couple times a month, approximately.</p> <p>23 Q. And what? Is it fingers and thumbs? Is it 24 both hands? Describe where it is.</p> <p>25 A. It's my thumb and these two fingers</p>	<p>1 numbness that you're feeling in your fingers and your 2 thumbs was caused by the accident?</p> <p>3 A. Yes.</p> <p>4 Q. And what doctor was that?</p> <p>5 A. Dr. Roccisano.</p> <p>6 Q. And when was the last time he said that --</p> <p>7 A. When I saw him right after the accident. I 8 couldn't tell you exactly when it was.</p> <p>9 Q. And has he said that recently?</p> <p>10 A. I have not seen him recently.</p> <p>11 Q. How many times did you see Dr. Roccisano?</p> <p>12 A. Once.</p> <p>13 Q. The low back pain, do you still have -- do 14 you have that currently?</p> <p>15 A. Not at this moment.</p> <p>16 Q. How often do you have low back pain?</p> <p>17 A. A couple, three, four, five times a week.</p> <p>18 Q. Do you take any medication for that?</p> <p>19 A. Ibuprofen.</p> <p>20 Q. Has any doctor in the last year and a half 21 told you that your low back pain was caused by the 22 accident?</p> <p>23 A. No.</p> <p>24 Q. Has any doctor ever told you that your low 25 back pain was caused by the accident?</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 A. Not specifically. 2 I mean, when I saw Dr. Roccisano, it was 3 for my neck and my spine and my back. 4 Q. And what do you recall him saying? 5 A. He -- about what? 6 Q. About your neck, your back and your spine? 7 A. He suggested that I get an MRI. 8 Q. Did you have the MRI? 9 A. No. 10 Q. And why not? 11 A. Because I had shoulder surgery shortly 12 after. 13 And after I had right shoulder surgery, I 14 developed deep vein thrombosis in my left arm, and I 15 couldn't do that. 16 I couldn't have an MRI while I was on blood 17 thinners, and I was on those for six months. 18 Q. Did you have an MRI once you were done with 19 the blood thinners? 20 A. No. 21 Q. And why not? 22 A. Didn't have health insurance. 23 Q. You've had health insurance in the last 24 year and a half. Have you had that MRI that 25 Dr. Roccisano recommended?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Meaning once a month, or -- 2 A. Sometime once a month. Sometimes twice a 3 week. 4 Q. And have you seen any sort of medical 5 provider for treatment for that? 6 A. No. 7 Q. And what are the nightmares? 8 A. That I'm being impaled by a tree? 9 Q. Anything else, or is it just that one 10 nightmare over and over? 11 A. Same nightmare over and over. 12 Q. Have you discussed those nightmares with 13 any doctor? 14 A. No. 15 Q. Are you -- are you seeing a mental health 16 physician? 17 A. No. 18 Q. How about anxiety? Tell me what -- 19 describe the anxiety that you are claiming in this 20 lawsuit. 21 A. It's the fear that there's times that I 22 will go to work, and I won't go home to my kids. 23 Q. And how often do you feel that anxiety? 24 A. Every time I get on a train. 25 Q. When did this anxiety start?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. No. 2 Q. Why not? 3 A. The same reasons that I stated earlier. 4 Q. And so going back to what, if anything, did 5 Dr. Roccisano say about what was causing your low 6 back pain? Even though I know you didn't do the MRI, 7 but what, if anything, did he say about what he 8 thought might have been causing it, if anything? 9 A. He didn't say. He just suggested that I 10 get an MRI. 11 Q. So, fair to say that Dr. Roccisano did not 12 say it was caused by the accident? 13 A. (No response.) 14 Q. Let me rephrase the question. 15 Is it fair to say that no doctor has said 16 that your low back pain was caused by the accident? 17 A. Yes. 18 Q. Okay. 19 So the nightmares, was this -- when did the 20 nightmares start? 21 A. Within days after the collision. 22 Q. And you still have them? 23 A. From time to time. 24 Q. How often? 25 A. Monthly.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Right after I went back to work in 2019. 2 Q. And are you seeing any sort of mental 3 health provider for the anxiety? 4 A. I'm not seeing a mental health provider. 5 Q. Has any doctor told you that the anxiety 6 was caused by the accident? 7 A. No. 8 Q. Have you ever had anxiety prior to the 9 accident? 10 A. Yes. 11 Q. How often? 12 A. A couple times. 13 Q. Anxiety about what? What was it related 14 to? 15 A. I don't know. 16 Q. What sort of situations would create -- 17 would cause the anxiety for you? Make you be 18 anxious, I guess? 19 A. It wasn't a specific situation. 20 Q. Okay. 21 So, give me an example of some of the 22 anxiety that you had prior to the accident? 23 A. Mm, just nervousness for no apparent 24 reason. 25 Q. Okay.</p>

Page 174	
1 accumulate vacation days that you could use in 2018?	
2 A. Yes.	
3 Q. So in 2019, did you also not accumulate --	
4 not have vacation days because you were not working	
5 because of the termination?	
6 A. Yes.	
7 MR. NICASTRO: All right.	
8 Nothing further.	
9 MR. WOLFF: She will waive.	
10 MR. HAGEMAN: All right.	
11 We're off the record at 2:00 p.m., and this	
12 concludes today's testimony given by Deidre Agan.	
13 The number of total Media Units was 4 and will be	
14 retained by Veritext.	
15 (Whereupon, signature waived.)	
16 (Whereupon, the deposition was concluded at	
17 2:00 p.m.)	
18	
19	
20	
21	
22	
23	
24	
25	
Page 175	
1 CERTIFICATE	
2	
3 STATE OF MONTANA)	
4 County of Yellowstone.)	
5	
6 I, Frances L. Mock, a free-lance shorthand	
7 reporter, a Notary Public in and for the State of	
Montana, do hereby certify that previous to the	
commencement of the examination of the said DEIDRE	
AGAN, a witness called for examination by the	
defendant in the said suit in the said U.S. District	
Court, District of Montana, Billings Division, being	
9 Civil Action No. 1:19-cv-000830-SPW-TJC, she was duly	
sworn by me to testify the truth in relation to the	
10 matters in controversy now pending and undetermined	
between the said parties so far as she should be	
11 interrogated concerning the same;	
12 That this deposition was taken in shorthand	
by me at 2722 Third Avenue North, Suite 400,	
13 Billings, Montana, on the 27th day of May, 2020,	
commencing at 9:03 a.m., and was reduced to	
14 typewritten form by me;	
15 That the foregoing is a true transcript of	
the questions asked, the testimony given and the	
16 proceedings had;	
17 That I am neither attorney nor counsel, nor	
in any way connected with any attorney or counsel for	
18 any of the parties to said action or otherwise	
interested in its event.	
19	
IN WITNESS I have hereunto set my hand and	
20 affixed my notarial seal this 7th day of June, 2020.	
21 My commission expires December 19, 2023.	
22	
23	
24 <%6686,Signature%>	
25	

1 **CERTIFICATE**
2

3 **STATE OF MONTANA)**
4 **) ss.**
5 **County of Yellowstone.)**

6 I, Frances L. Mock, a free-lance shorthand
7 reporter, a Notary Public in and for the State of
8 Montana, do hereby certify that previous to the
9 commencement of the examination of the said **DEIDRE**
10 **AGAN**, a witness called for examination by the
11 defendant in the said suit in the said U.S. District
12 Court, District of Montana, Billings Division, being
13 Civil Action No. 1:19-cv-000830-SPW-TJC, she was duly
14 sworn by me to testify the truth in relation to the
15 matters in controversy now pending and undetermined
16 between the said parties so far as she should be
17 interrogated concerning the same;

18 That this deposition was taken in shorthand
19 by me at 2722 Third Avenue North, Suite 400,
20 Billings, Montana, on the 27th day of May, 2020,
21 commencing at 9:03 a.m., and was reduced to
22 typewritten form by me;

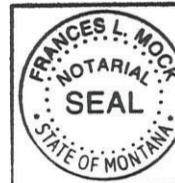
23 That the foregoing is a true transcript of
24 the questions asked, the testimony given and the
25 proceedings had;

26 That I am neither attorney nor counsel, nor
27 in any way connected with any attorney or counsel for
28 any of the parties to said action or otherwise
29 interested in its event.

30 IN WITNESS I have hereunto set my hand and
31 affixed my notarial seal this 7th day of June, 2020.

32 My commission expires December 19, 2023.

33 *Frances L. Mock*



34 FRANCES L. MOCK
35 NOTARY PUBLIC for the
36 State of Montana
37 Residing at Billings, Montana
38 My Commission Expires
39 December 19, 2023